

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92770; File No. SR-NYSE-2021-43)

August 26, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Term “Related Party Transactions” under Section 314.00 of the NYSE Listed Company Manual

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 19, 2021, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the provisions of Section 314.00 of the NYSE Listed Company Manual (“Manual”) in relation to the review and approval of related party transactions. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 314.00 of the Manual provides that a company’s audit committee or another independent body of the board of directors, shall conduct a reasonable prior review and oversight of all related party transactions for potential conflicts of interest and will prohibit such a transaction if it determines it to be inconsistent with the interests of the company and its shareholders. For purposes of this rule, the term “related party transaction” refers to transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Act (but without applying the transaction value threshold of that provision). In the case of foreign private issuers, the term “related party transactions” refers to transactions required to be disclosed pursuant to Item 7.B of Form 20-F (but without regard to the materiality threshold of that provision).

Item 404 of Regulation S-K and Item 7.B of Form 20-F set forth the SEC’s requirements for the disclosure of related party transactions by domestic issuers and foreign private issuers respectively. Related party transaction disclosures are required in a number of SEC filings, including annual reports and, in the case of domestic issuers, annual meeting proxy statements. Item 404 of Regulation S-K requires disclosure of a related party transaction when the amount involved in such transaction exceeds \$120,000.<sup>4</sup> Item 7.B of Form 20-F requires disclosure of transactions that are “material to the company or the related party, or any transactions that are

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<sup>4</sup> Item 404(c) separately sets forth the application of Item 404 to promoters and certain control persons. Item 404(d) separately sets forth the application of Item 404 to smaller reporting companies.

unusual in their nature or conditions” and also of the amount of outstanding loans (including guarantees of any kind) made by the company, its parent or any of its subsidiaries to or for the benefit of a related party. The Exchange proposes to amend Section 314.00 to provide that the review and approval requirement of that rule will be applicable only to transactions that are required to be disclosed after taking into account the transaction value and materiality thresholds set forth in Item 404 of Regulation S-K or Item 7.B of Form 20-F, respectively, as applicable.

The Exchange recently amended Section 314.00 to provide greater clarity as to the types of transactions that were specifically subject to review and approval under the rule.<sup>5</sup> In adopting that amendment to Section 314.00, the Exchange sought to create greater clarity and certainty for issuers by specifying that the transactions subject to review would be those that were required to be disclosed pursuant to Item 404 of Regulation S-K or Form 20-F, Item 7.B, as applicable. However, the Exchange also specified in that amendment that related party transactions would be subject to review without regard to the transaction value or materiality thresholds included in the SEC’s disclosure rules.

In the period since the adoption of that amendment, it has become clear to the Exchange that the amended rule’s exclusion of the applicable transaction value and materiality thresholds is inconsistent with the historical practice of many listed companies, and has had unintended consequences. The Exchange has learned that many listed companies have had a longstanding understanding that they were required to subject related party transactions to the review process required by Section 314.00 only if such transactions exceeded any applicable transaction value or materiality thresholds in the applicable SEC rules and therefore were required to be disclosed.

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<sup>5</sup> See Securities Exchange Act Release No. 91471 (April 2, 2021); 86 FR 18362 (April 8, 2021) (SR-NYSE-2020-85).

This approach is embodied in the written related party transaction policies of many listed companies and is typically a part of the annual questionnaire completed by directors and officers in connection with the company's annual meeting. By not permitting the use of transaction value and materiality thresholds, the amendment to Section 314.00 has had the unintended effect of disrupting the normal course transactions of listed companies. Because of the amendment, many companies have been required to adopt for the first time two separate standards for related party transactions -- one for disclosure and another for review and approval of transactions. This has created a significant compliance burden for issuers with respect to small transactions that are considered immaterial for purposes of other regulatory requirements. Furthermore, the Exchange believes that the review and approval of large numbers of immaterial transactions is not an effective use of the time of independent directors who have many other time-consuming oversight obligations with respect to matters that are higher risk and more material to the company.

The Exchange notes that domestic listed companies are also required to comply with the requirements of Section 303A of the Manual with respect to director independence, including the bright line independence tests set forth in Section 303A.02(b). This proposal does not seek in any way to modify listed companies' obligation to comply with the independence requirements of Section 303A or listed companies' obligations to make disclosures to the Exchange with respect to their compliance with those obligations.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> in that it is designed to promote just and equitable principles of trade, to foster

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<sup>6</sup> 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is consistent with the protection of investors to amend Section 314.00 to conform the related party transactions that are subject to the review and approval requirements of Section 314.00 to those transactions that are subject to the applicable requirements of Item 404 of Regulation S-K and Item 7.B of Form 20-F. In adopting the applicable provisions of Regulation S-K and Form 20-F, the SEC determined which related party transactions must be publicly disclosed. The Exchange believes it is therefore consistent with the protection of investors to apply the same standards in determining which transactions should be subject to review and approval under Section 314.00. The Exchange notes that the Nasdaq Stock Market takes such an approach in its rule with respect to the review of related party transactions, which requires the review of transactions subject to disclosure under Item 404 of Regulation S-K and Item 7.B of Form 20-F, including the transaction value and materiality thresholds of those regulations.<sup>7</sup>

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>7</sup> See Nasdaq Marketplace Rule 5630.

### Intramarket Competition.

All companies listed on the NYSE will be subject to the amended form of Section 314.00. Therefore, the Exchange does not believe that the proposed amendment will have any meaningful effect on the competition among issuers listed on the Exchange.

### Intermarket Competition.

The purpose of the proposed amendment is to provide for an efficient and transparent framework for the review and approval of related party transactions at all listed companies. As such, it is focused solely on corporate governance and is not intended to confer any commercial or competitive benefit on NYSE listed companies. In addition, the proposal substantively conforms Section 314.00 to the related party transaction approval rule of Nasdaq, the other primary listing venue for operating companies in the United States. For the foregoing reasons, the Exchange does not believe that the proposed amendment will have any meaningful effect on intermarket competition for the listing of operating companies.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-43 on the subject line.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2021-43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to



make available publicly. All submissions should refer to File Number SR-NYSE-2021-43 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).